

1                                   IN THE UNITED STATES DISTRICT COURT  
2                                   FOR THE EASTERN DISTRICT OF TEXAS  
3                                   MARSHALL DIVISION

13 STATUS CONFERENCE AND MOTIONS HEARING  
14 BEFORE THE HONORABLE RODNEY GILSTRAP  
15 UNITED STATES JUDGE

18 FOR THE PLAINTIFF: (See sign-in sheets docketed in  
minutes of this hearing.)

22 COURT REPORTER: Ms. Tammy L. Goolsby, CSR

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**I N D E X**

**Date: March 27, 2017**

**PAGE**

**Appearances**

**1**

**Hearing**

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**43**

JP MORGAN CHASE BANK, NA vs DATATREASURY CORPORATION  
STATUS CONFERENCE AND MOTIONS HEARING, on 03/27/2017

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1 P R O C E E D I N G S

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Be seated, please. This is the time set  
4 for a Status Conference and Hearing on Motions to Compel and  
5 related motions in the JP Morgan Chase Bank NA versus  
6 Datatreasury Corporation, case being Civil Action No.  
7 5:12-CV-119.

8 Let me ask for announcements on the record. Who is  
9 here on behalf of the Plaintiff JP Morgan Chase?

10 MR. DOAN: Your Honor, Darby Doan, and with me is  
11 Daniel Mayerfeld from Skadden Arps and Zach Newman.

12 MR. NEWMAN: Good morning, Your Honor.

13 MR. DOAN: Steve Aquino. And the law firm is Hahn --

14 MR. NEWMAN: And Hessen.

15 MR. DOAN: -- & Hessen, LLP.

16 THE COURT: All right Thank you. What says the  
17 Defendant?

18 MR. GILLILAND: Your Honor, Derek Gilliland and Winn  
19 Cutler with Nix, Patterson & Roach on behalf of Datatreasury  
20 Corporation. And with me is Sam Johnson from Scott, Douglass,  
21 and McConnico on behalf of Nix, Patterson & Roach.

22 THE COURT: All right. Thank you.

23 Counsel, these are motions that have been pending for  
24 some considerable length of time; however, they haven't been  
25 assigned to me until earlier this year; and once they were

1 assigned to me, it became pretty clear that I needed to get you  
2 all before me fairly soon to see exactly where we are, what's  
3 the status of these matters, what are the parties' concerns and  
4 intentions.

5 I've reviewed the pending motions. I've also  
6 reviewed Mr. Newman's letter of October 13th addressed to Judge  
7 Schroeder, who had the case after Judge Schneider and before it  
8 got to me.

9 What I would like is, starting with the moving  
10 Plaintiff, I'd like a brief overview of where you think you  
11 are, what you think the issues are, and what you're looking for  
12 the Court to facilitate from your perspective, and then the  
13 same type of response from the Defendant, so why don't we start  
14 with Plaintiff.

15 Let me hear that from the podium, Mr. Newman, when  
16 you're ready. I know -- and I'll save you sometime. I know  
17 generally from a high level the history on this litigation.

18 MR. NEWMAN: Excellent. Well, first, good morning,  
19 Your Honor. Thank you for having me in your courtroom. Zach  
20 Newman from the firm of Hahn & Hessen for JP Morgan Chase Bank.

21 Just by way of a very brief background, the case  
22 started off as a lawsuit against Datatresury Corporation back  
23 in 2012. A judgment was ultimately stipulated. JP Morgan  
24 Chase is now a judgment creditor with a judgment that's been  
25 affirmed. There's no further appellate processes that are

1 available to them. It's a \$69 million principal judgment  
2 amount.

3 The -- the underlying of the litigation, the basis of  
4 litigation is not really material to the issues that we have  
5 before the Court today except for in one respect, and I'll  
6 explain that in a moment.

7 We're essentially here today, Judge, to ask the Court  
8 to assist a judgment creditor to enforce post-judgment  
9 discovery advices and inquiries to both the judgment debtor and  
10 its principal counsel, who is also serving as the claims  
11 administrator for all of the patent prosecution cases that were  
12 brought.

13 In addition, Nix, Patterson has been explained during  
14 sworn testimony in the underlying litigation that it is the  
15 repository, the custodian for all of Datatresury's documents  
16 from what we understand, electronics documents, banking  
17 records, everything. Everything resides with Nix, Patterson.

18 Once the judgment was entered in the Court, JP Morgan  
19 served just three devices, three devices. One was a document  
20 demand to Datatresury, and these are all in the record. The  
21 second device is an interrogatory that went to Datatresury,  
22 and the third is a subpoena for documents that went to the Nix,  
23 Patterson firm that was serving as the claim administrator, the  
24 custodian of records, and also counsel for Datatresury.

25 In the Datatresury document demand and interrogatory

1 request, the definitions are broad enough to encompass Nix,  
2 Patterson. In the Datatreasury definition, it includes  
3 attorneys, so essentially JP Morgan is saying Datatreasury and  
4 Nix, Patterson, please give me all the documents that you have  
5 that we're asking for, and those documents include financial  
6 documents, documents supporting the substantiating transfers,  
7 location of assets.

8           You're dealing with a company that had two very  
9 valuable patents, had many other patents, some of which have  
10 been transferred, we believe, but two principle patents have to  
11 do with a check processing imaging, and those patents and the  
12 prosecution of cases generated from what we understand close  
13 to, if not in excess of, Your Honor, \$600 million, \$600  
14 million.

15           JP Morgan was the first bank to enter into a  
16 settlement and license agreement back in 2005 with  
17 Datatreasury, but there have been many summary agreements  
18 thereafter and a tremendous amount of money has been generated,  
19 and at this point, with the \$69 million principal judgment,  
20 we're interested to understand where the money is, where it  
21 went, what it was used for.

22           And we have received from Nix, Patterson a number of  
23 productions. They have produced a number of productions, and  
24 when I say Nix, Patterson, it's really Datatreasury and Nix,  
25 Patterson. We don't really know exactly where the documents

1 are coming from that's given to us from Nix, Patterson, and  
2 they'll likely tell you that they have made multiple  
3 productions.

4 The problem is that what we're receiving is kind of  
5 like a drip out of the faucet. Every so often when we make  
6 noise, a drip, a drip, a drip, and it's just not adequate, and  
7 when we get into the motions, I have certain documents to show  
8 Your Honor and to explain why that's the case.

9 So JP Morgan comes to Court and asks Your Honor the  
10 way to facilitate this case is very simple in our view. We  
11 understand the defense may have a different view, but it's  
12 really very simple.

13 Three orders we ask for, or even one order, that  
14 simply says, Datatresury and Nix, Patterson, you have to  
15 comply with the discovery demands, and that gives us an  
16 enabling order that allows us to say to both Nix, Patterson and  
17 Datatresury, you haven't given us this, you haven't given us  
18 that, and you should have and you're required to, and then if  
19 we need to come back to Court to further enforce the order,  
20 we'll do that.

21 But at this point, Datatresury and Nix, Patterson  
22 have selected what they wanted us to see, and that boils down  
23 to two principal issues; one, they refuse to give us any  
24 documents earlier than June 2011.

25 And I don't want to get too into the motions, but

1 they draw a demarkation, they draw a line and say we're not  
2 giving you a single thing before June of 2011.

3 THE COURT: June 2011 is what? Is that the date with  
4 the Cafe Bank settlement or --

5 MR. NEWMAN: No. June 2011 is the date that JP  
6 Morgan wrote to DTC, to Datatresury and its attorneys, to  
7 inform them that Datatresury upon JP Morgan's belief had  
8 entered into several third party license agreements that had  
9 more favorable terms and that would cause the true up.

10 Now, Datatresury actually had the obligation in our  
11 settlement agreement to notify JP Morgan when it entered into  
12 those agreements. We were the first party to enter into these  
13 agreements, so there was no set market for the economics of  
14 our -- of our transaction, but we have agreements going back to  
15 2006, and it was in our expert report, that were comparable  
16 agreements that would have caused a true up.

17 And what Nix, Patterson, Datatresury is saying now  
18 is, well, the way that we -- that we entered into the judgment  
19 with you for the \$69 million, we relied upon this Cafe Bank as  
20 the representative example, which was an agreement that was  
21 actually signed -- I have it here. Let's see. What's the  
22 date? October of 2012. October of 2012 is the representative  
23 example, but it's mixing apples and oranges.

24 As the judgment creditor now and where DTC had an  
25 obligation to notify us all going back to 2005, we should have



1 the right to understand what financial information, what  
2 transactions were occurring, the monies in and the monies out,  
3 for all that time.

4 And just to put this into perspective, in 2011 we  
5 know that a dividend was declared by the board for Datatreasury  
6 where they disbursed -- they paid a dividend of \$14.1 million  
7 in 2011. In 2012 we know they made a dividend of at least a  
8 value of \$3 million by distributing stock in another company to  
9 its shareholders.

10 But they will not tell us what dividends were  
11 declared in 2010 or 2009 when the bulk of these settlement  
12 agreements were being entered into, and we believe that we're  
13 entitled to that.

14 THE COURT: Let me ask you --

15 MR. NEWMAN: Yes.

16 THE COURT: -- this question. Clarify this point for  
17 me. I understand what you're saying that with regard to the  
18 litigation brought by Datatreasury, the posture of the  
19 Plaintiff that generated the 600 plus million dollars that you  
20 referred to. I understand you to say that the records were not  
21 only the law firm, but the records for the client are in the  
22 possession of Nix, Patterson.

23 MR. NEWTON: That's right.

24 THE COURT: I assume that the ordinary operating  
25 records of Datatreasury and the records for their operations

1 not tied to the litigation are separately in the possession of  
2 Datatreasury and are elsewhere, but are not in the possession  
3 of Nix, Patterson. Can you make that distinction for me?

4 MR. NEWTON: I think I can, Your Honor, and in the  
5 record, according to DTC's, again, Datatreasury's chief  
6 executive officer at the time Keith Delucia, he testified that  
7 DTC has almost no documents because they gave them to Nix,  
8 Patterson, and he testified that --

9 THE COURT: Wait a minute. No documents at all or no  
10 documents related to the litigation?

11 MR. NEWMAN: He then testified that, quote, Nix,  
12 Patterson has all of his electronic files and documents,  
13 unquote, and has, quote, anything at all, whether it be emails,  
14 legal documents, digital files, or physical forms.

15 THE COURT: So in other words what you're telling me  
16 is for purposes of discovery in aide of enforcing Chase's  
17 judgment, you're not able to distinguish a line between Nix,  
18 Patterson and Datatreasury?

19 MR. NEWTON: Absolutely not, completely blurred, and  
20 so every sheet of paper that we have, I don't know exactly what  
21 file it came out of. I have no idea. All I know is --

22 THE COURT: Let me ask this --

23 MR. NEWTON: Sure.

24 THE COURT: -- another way. I can understand an  
25 overlap between the law firm and the client with regard to the

1 activities and litigation generated the recoveries.

2 At some point, those recoveries as they came in were  
3 disbursed, and Datatresury got its net recovery out of those  
4 lawsuits, and I assume Nix, Patterson got its expenses and its  
5 legal fees and so forth out of those lawsuits, and what Nix,  
6 Patterson kept and what Datatresury got should add up to the  
7 total of what was paid by that particular Defendant who either  
8 settled or discharged the judgment or whatever.

9 What happened to the money after it was distributed  
10 to Datatresury and whether it's been -- how it's been handled,  
11 whether it still exists, whether it's all gone, or anything in  
12 between, those records, you're telling me, are within the  
13 control and the sole possession of Nix, Patterson or not  
14 elsewhere held by an independent entity operating as  
15 Datatresury Corporation.

16 MR. NEWMAN: That's what we understand and that's  
17 what we've been led to believe. That's what we've been led to  
18 believe.

19 May I use the easel for a moment, Your Honor?

20 THE COURT: You may.

21 MR. NEWTON: So this June 2011 date that they're so  
22 focusing on, in 2011 you had a \$14.1 million dividend. In 2012  
23 you had at least a \$3 million dividend. 2013 to present,  
24 unknown because they won't tell us. 2010, 2009, 2008, and  
25 back, we don't know because they won't tell us.

1           The bulk of the money was coming in in '09 and '10,  
2           '08, '09, and '10, but they won't tell us, so I can't answer  
3           Your Honor's question where the money went.

4           What I can answer is that some of the bank statements  
5           that we received, and we haven't received full copies, shows  
6           that Datatreasury is cash insolvent, has no cash, no cash to  
7           satisfy this judgment.

8           We know that Nix, Patterson wasn't just serving, as I  
9           said, as the lawyers because when the money comes in, it went  
10          straight to Nix, Patterson as the claims administrator. Nix,  
11          Patterson would then make tons of disbursements to other  
12          lawyers, to DTC, but we don't have all of their financial  
13          records. We have some summary statements.

14          The only general ledger that they gave us was for  
15          essentially the 2011 and 2012 time frame, so they gave us just  
16          this small little snapshot and gave us just what they wanted to  
17          give us, but we don't know where the money went, and that's the  
18          very reason that we're here in court today.

19          THE COURT: Well, ordinarily in a situation like  
20          this, at least as I see it, there's usually a threshold, and  
21          from the creditor's standpoint, knowing what the client got and  
22          then being able to trace that money going forward is a first  
23          level and reasonable inquiry.

24          What a Defendant in this case, the Defendant's law  
25          firm is always concerned about is at some point the creditor is

1 going to say the law firm either overcharged or kept money that  
2 should have gone to the client and that money is money that  
3 could discharge or partially discharge our judgment and we want  
4 to get into the law firm's business and we want to go through  
5 every disbursement they made and we want them to justify to us  
6 every penny they paid out of these recoveries --

7 MR. NEWTON: Right.

8 THE COURT: -- so that we can try to pull the money  
9 out of that --

10 MR. NEWMAN: Right.

11 THE COURT: -- out of the law firm's pocket. Now,  
12 ordinarily the judgment debtor, as the prior Plaintiff in all  
13 this litigation, would be a freestanding separate entity with  
14 its own records and you could find out from them what they  
15 received from Nix, Patterson and Nix, Patterson could confirm  
16 what they distributed with them and you could run forward  
17 tracing down, tracking down that money, whether it was properly  
18 handled, whether it's been hidden, where it might be, to  
19 satisfy your judgment.

20 That I don't have from a high level a real problem  
21 with. What I do have a problem with is a fishing expedition  
22 and a blank check, no pun intended since you represent a bank,  
23 to go back into the law firm's business and try to create or  
24 generate a way to recover part of what they kept out of the  
25 litigation that the client seemed or I would assume was

1 satisfied with and didn't say, you've underpaid me, I need more  
2 money.

3 MR. NEWTON: Right.

4 THE COURT: And that's where every law firm is very  
5 suspicious, and rightfully so. And, you know, I need to -- I  
6 need to be told and I want to know going forward in this matter  
7 is Chase on the first level of pursuit or are you on the second  
8 level of pursuit.

9 And if you're going to -- if you're going to try to  
10 pursue the second level of pursuit, you're going to have to  
11 give me some justification for that. I'm not just going to  
12 turn this law firm's records over to you for whatever purpose  
13 you want.

14 But I do think you need and you're entitled to know  
15 what the client got, what the net was, and the gross received,  
16 the amount kept by the law firm for its fees, expenses, and  
17 overhead, and what the client received so that you can then  
18 know what you're looking at going forward to try and find out  
19 where these dollars went in hopes of recovering on your  
20 judgment. So that is perfectly legitimate from a high level.

21 Now, I know there are probably a number of sublevel  
22 problems, issues, and disputes that we may have to work  
23 through, but I want to make it clear to you I'm open to the  
24 kind of first level pursuit that I've described from a high  
25 level.

1 I want you to understand I am not open, without some  
2 real justification, to the second level of pursuit that I've  
3 described to you, and I want you to be clear that I see a line  
4 between those two.

5 MR. NEWMAN: May I respond to that, Your Honor?

6 THE COURT: Sure.

7 MR. NEWMAN: I don't think we have a disagreement. I  
8 think we're on the same page with respect to the Court's  
9 perspective.

10 Now, I will say that Nix, Patterson received from  
11 what we understand about 48 percent as revenue for the  
12 settlements; and Nix, Patterson also put itself in a unique  
13 position, unlike other typical law firm, client relationships,  
14 where it was acting as a claims administrator in addition to  
15 the law firm is now acting as the custodian for all the  
16 records, but all of the document requests --

17 THE COURT: That's not --

18 MR. NEWMAN: The --

19 THE COURT: That's not a terribly unusual  
20 situation --

21 MR. NEWMAN: Let me just say this, Judge. All the  
22 document requests and interrogatories --

23 THE COURT: Counsel -- counsel.

24 MR. NEWMAN: Yes.

25 THE COURT: It's my prerogative to interrupt you.

1 It's not your prerogative --

2 MR. NEWMAN: Of course, Your Honor.

3 THE COURT: -- to interrupt me. Do we understand  
4 each other?

5 MR. NEWMAN: Of course.

6 THE COURT: Okay. What I was going to tell you  
7 before you started talking again is that anybody familiar with  
8 the decades of asbestos litigation in East Texas and other  
9 places know that it's not unknown for a law firm to act as a  
10 claims administrator as well as a disbursing agent for  
11 recoveries. Go ahead and finish your comments.

12 MR. NEWMAN: Yes. Thank you, Your Honor. Every  
13 document request that was asserted in the Datatresury document  
14 demand, the interrogatory, and the Nix Patterson subpoena are  
15 all aimed to understand the flow of monies that came in  
16 separate and apart from the Nix, Patterson revenue.

17 We are not looking at that inquiry that you just  
18 mentioned as part of this effort. We're not looking to start  
19 looking into distributions at the Nix, Patterson Law Firm at  
20 this time. We're not asking for that discovery.

21 So when I said that we agree with the Court's  
22 perspective, we are looking for Datatresury information,  
23 not -- if Nix, Patterson had an agreement with Datatresury and  
24 it earned 48 percent of settlements and judgments and payments,  
25 royalties.



1           And if we want discovery about that, we will serve a  
2 device, and if we have an issue, we'll come back to this Court.  
3 I am not looking to go beyond that level at this time.

4           THE COURT: All right.

5           MR. NEWMAN: And the reason I mentioned about the  
6 blurring of the companies is because -- about the firm acting  
7 as the claims administrator is that with the amount of money  
8 that flowed through this company and the amount of transfers  
9 that we've seen just in the -- in the excerpts of the general  
10 ledgers that we have, we know that they were transferring  
11 millions of dollars to directors and shareholders. We don't  
12 know why. They won't tell us why.

13           We have board minutes, for example, Your Honor. This  
14 is the board minutes for the end of 2011, and they mention that  
15 they had an executive compensation expert report that  
16 identified bonuses, and we see in the general ledger that major  
17 transfers were made, but we don't know why they are made.

18           We've asked for the documents to support those  
19 transfers, those payments. We can't even evaluate whether we  
20 have a claim or not. In these board minutes, Datat treasury  
21 produces them like this without a privilege log or without  
22 claiming that there's any privilege.

23           In the 2012 board minutes --

24           THE COURT: Well, as I said earlier, I'm perfectly  
25 aware below the high level division that I've mentioned with

1 you, and that you've indicated you agree with me on, that there  
2 are going to be a lot of sublevel disputes and arguments that  
3 we're probably going to have to work through.

4 But I wanted to be clear up front as to how I see the  
5 fork in the road here and to make sure that you understand  
6 which fork of the road we're trying to go down, and I think --  
7 I think we've covered that.

8 MR. NEWMAN: All right, Judge.

9 THE COURT: We'll get into all the --

10 MR. NEWMAN: That's fine.

11 THE COURT: -- potholes in the fork of the road that  
12 we go down as we go down. I'm going do this at this point: I  
13 want to hear from the Defendant in response and then let's see  
14 where we go from here.

15 MR. NEWMAN: Thank you.

16 MR. GILLILAND: Your Honor, Derek Gilliland for  
17 Datatresury Corporation. I'm from Nix, Patterson & Roach. We  
18 are separately represented here by Mr. Sam Johnson, we being  
19 the law firm of Nix, Patterson & Roach, because we have been  
20 subpoenaed as the law firm for documents.

21 Now, I want to go through a little bit of the  
22 background for the sake of the Court, but I will say first the  
23 concept and the argument and the idea that Datatresury's  
24 repository for all of its documents is Nix, Patterson & Roach  
25 and that Nix, Patterson & Roach is handling all of their

1 financial transactions, both of those statements are patently  
2 false. We are the law firm for Datatresury Corporation for  
3 purposes of patent infringement assertion claims.

4 Now, backing up, Datatresury, historically they were  
5 formed as a result of an invention created by Claudio Ballard  
6 that was encapsulated in two patents that we refer to as '137  
7 and the '988 patent.

8 When the first of those patents issued around 2000,  
9 Datatresury Corporation raised over \$25 million in capital,  
10 built out a data center, and then started trying to sell its  
11 services to the financial industry to serve as an archive for  
12 financial documents.

13 The idea of the patents came to Claudio Ballard when  
14 he saw a pizza restaurant guy storing all of his credit card  
15 receipts in a shoebox so that if an issue came up later, he  
16 could dig through the shoebox and verify the transaction, so  
17 that prompted Claudio to come up with the idea of an electronic  
18 document repository that led to the patent applications.

19 When the patents issued, they raised that money.  
20 They went out and pitched their services to several companies,  
21 one of the first of which being JPMC Corporation, and this is  
22 in the early 2000 time period.

23 They spent unfortunately, like many start-up  
24 companies, almost all of the capital that they raised. They  
25 spent the majority of that building out the data center

1 counting on getting clients right away and making money right  
2 away.

3 Well, the banks, when they looked at them, and  
4 representatives from the JP Morgan Chase looked at  
5 Datatreasury, realized they were a start-up company, they  
6 passed on using them for their service, but they went on to  
7 create a company called Viewpoint and another company called  
8 SCP Co, all of which later got pulled into patent infringement  
9 litigation by Datatreasury.

10 We began representing Datatreasury, my law firm, in  
11 2002 and have represented them in cases against multiple  
12 Defendants, including JPMC. Counsel for JPMC Skadden Arps also  
13 represented Viewpoint Corporation, also got copies of all of  
14 these settlement agreements as part of the ongoing litigation.

15 Even after Chase settled, the same lawyers for  
16 Skadden stayed involved on behalf of Viewpoint Corporation in  
17 the ongoing litigation that ultimately resulted in a trial in  
18 this very courtroom in 2010, at which many of these agreements  
19 were discussed in open court.

20 Then fast forward to 2011, and for various reasons,  
21 JPMC had reason to write the Datatreasury Corporation  
22 concerning an indemnity claim because a gentleman named Duke  
23 had sued Datatreasury, the banks, and several others, under an  
24 idea that there was a conspiracy to defraud him of his money or  
25 his interest in the patents and claimed some ownership interest

1 in the patents.

2 As a result of him filing that lawsuit, JPMC demanded  
3 indemnity from Datatresury Corporation and in June of 2011  
4 wrote a letter demanding indemnity, as well as raising the most  
5 favored licensee clause for the first time for Datatresury.

6 So that's what keyed that 2011 date as the first  
7 notice Datatresury had that JPMC was unaware of any prior  
8 settlement agreements or interpreted the most favored licensee  
9 clause different than Datatresury interpreted it.

10 That resulted in the lawsuit that was filed in  
11 November of 2012, went before Judge Schneider, summary judgment  
12 motions were granted that resulted in the judgment that was  
13 taken up on appeal. The Fifth Circuit ultimately affirmed  
14 Judge Schneider in a two-to-one decision, and motion for  
15 rehearing on bond and petition were served and both denied, so  
16 the judgment became final, and then we get into the discovery  
17 that we're here about.

18 The first issue is the concept that Mr. -- or that  
19 Nix, Patterson & Roach has all of Datatresury's documents is  
20 patently false, and they're relying entirely on the excerpt  
21 from the deposition of Keith Delucia in which -- I believe it  
22 was Mr. Mayerfeld was asking Mr. Delucia, he started asking  
23 Mr. Delucia about whether documents -- Mr. Delucia's documents  
24 had been gathered and collected for this litigation.

25 THE COURT: Let me interrupt you for a minute,

1 counsel.

2 MR. GILLILAND: Yes, sir.

3 THE COURT: Just for purposes of clarify and  
4 understanding, does Datatreasury today maintain a physical  
5 location and a presence in the State of Texas separate and  
6 apart from the law offices of Nix, Patterson? Do they operate?  
7 Do they conduct business? Are they -- how are they structured?  
8 Give me some background.

9 I mean, you come up and say that Plaintiff's  
10 counsel's statement that there are no records outside of Nix  
11 Patterson with regard to Datatreasury is patently false. Tell  
12 me where they are and where their records would be and give me  
13 an idea of if there is space and distance between Nix,  
14 Patterson and Datatreasury, explain what that space is and  
15 where it is.

16 MR. GILLILAND: Certainly, certainly, Your Honor. So  
17 since roughly 2014, Datatreasury's operations have been  
18 minimal, but up until -- and I'm not certain of the exact date,  
19 whether it was 2015, 2016, Datatreasury had physical offices in  
20 facilities in Plano.

21 Those have since -- the patents in a separate  
22 lawsuit, the two key patents, the '137 and '988, have been  
23 declared invalid. As that process has gone on, Datatreasury's  
24 operation have slowed significantly when -- to where they -- I  
25 think they have -- I know they've closed the office in Plano.

1 I believe all the furniture has been put into storage either in  
2 the Plano area or in Boca Raton, Florida.

3 The outside general counsel Mr. Shephard Lane has  
4 handled the -- what is left really of the operations of  
5 Datatresury Corporation, and it's my understanding that he has  
6 control over where most of the documents are.

7 We do know more recently we have gotten some of the  
8 banks statements that we've produced to the Plaintiff we've  
9 gotten from Datatresury's accountants that are in Dallas.  
10 It's the Seville CPA firm in Dallas.

11 I expect there are probably records maintained by the  
12 law firm that have had to defend Datatresury in various claims  
13 in New York, that those documents would either be there or with  
14 Mr. Lane.

15 Mr. Lane would normally attend the hearing today,  
16 Your Honor, but he had a heart valve put in last June or July,  
17 and because of complications from that -- and I have a letter  
18 from one of his doctors if the Court would like to see it.  
19 He's -- they -- he's back in Mount Sinai Hospital having that  
20 valve replaced because the original valve has a bacterial  
21 infection, so he's not here today and he's not available to  
22 answer questions specifically about where some of these  
23 documents are, but if they have -- so Mr. Lane has control over  
24 those documents.

25 They also have an agent I think that was identified

1 in interrogatories that maintains shareholder communications  
2 for Datatresury, which Datatresury Corporation has  
3 hundreds -- I believe a little over a thousand individual  
4 shareholders, and there's a separate company, whose name  
5 escapes me at the moment, that manages and maintains those  
6 correspondence from Datatresury.

7 THE COURT: When you said in your briefing that JP  
8 Morgan Chase could get what they were seeking from Datatresury  
9 from other sources, are you -- are you now telling me that that  
10 is Skadden Arps or some other law firm or precisely what other  
11 sources are available for them to get this information without  
12 coming directly to you?

13 MR. GILLILAND: Sure. Well, and the sources would be  
14 from Datatresury as we're able to get the documents from  
15 Datatresury. We've identified the banks where Datatresury's  
16 maintained accounts. I believe we've identified the company  
17 that maintains the shareholder communications in  
18 interrogatories.

19 They could -- they have yet to take a deposition of  
20 an individual from Datatresury to find out where all the  
21 documents are, ask questions about these transfers, but if they  
22 would just take a deposition of an individual, they could get a  
23 lot of clarity into who else would have control over a lot of  
24 these documents rather than counsel for Nix -- or counsel for  
25 Datatresury Corporation, being Nix, Patterson & Roach.



1           One point that does bring to mind, Your Honor, is the  
2           idea that they can't tell where the documents came from. We've  
3           made it -- I thought we made it very clear by the Bates number  
4           method.

5           We've produced -- when we produced on behalf of Nix,  
6           Patterson & Roach, we made sure that the Bates numbers began  
7           with NPR, and we identified those documents as being produced  
8           by Nix, Patterson & Roach under the subpoena they provided.  
9           Everything else that we've produced in the case has had a DTC  
10          for Datatresury Corporation prefix on it, so it's clear which  
11          documents have come from us and which documents have come from  
12          Datatresury.

13          From Nix, Patterson & Roach, with the client's  
14          permission, we've provided the internal ledger for our IOLTA  
15          account, filtered for Datatresury transactions because, as I'm  
16          sure the Court is aware, that IOLTA account maintains funds for  
17          all of our firm's clients.

18          We've provided the settlement distribution statements  
19          that show the gross amount, the amount we removed for  
20          litigation expense, the amount paid to attorneys and others,  
21          and the net that went to Datatresury Corporation, and then  
22          through the bank accounts, and I assume through a deposition of  
23          the Datatresury representative, which, again, would be  
24          Mr. Lane is the person most knowledgeable about all of those  
25          processes.

1 THE COURT: When you say you've provided those  
2 things, I assume you've provided them from a certain point in  
3 time forward.

4 What is the chronological scope of what you just told  
5 me you've provided, and if there is a gap timewise, what's the  
6 justification for allowing that gap not to be covered with the  
7 same kind of information?

8 MR. GILLILAND: Certainly, Your Honor. The  
9 information we provided has been from the June 2011 time period  
10 forward, which is the date the Datatresury was first aware of  
11 a dispute over how the most favored licensee clause should be  
12 interpreted. We provided that information all the way up  
13 until -- at least on behalf of the firm, it was provided up  
14 until the June 2015.

15 We haven't supplemented that production, but we  
16 wouldn't have -- I don't see a reason why we couldn't do that.  
17 The briefing was filed. The case sort of went into a hold  
18 period.

19 THE COURT: What is it about this June 2011 date that  
20 you believe is magic in some way that you can't go prior to  
21 that in making these same kind of settlement distribution  
22 disclosures as to what was received, what was kept out and paid  
23 to others, and what was disbursed to Datatresury?

24 MR. GILLILAND: There are two parts in response to  
25 that, Your Honor.

1           The first part being that post-judgment discovery is  
2     to identify what assets are available to satisfy a judgment,  
3     and that would arguably only include the assets that are  
4     currently available to Datatreasury Corporation.

5           So we felt like we were going beyond what was really  
6     required under Rule 69 because there have been no claims of  
7     fraudulent transfers, there have been no allegations of that.  
8     There have been no depositions taken around that.

9           So we decided, well, we can go back in time, but the  
10    earliest possible time that Datatreasury had notice of a claim  
11    by JP Morgan Chase is when they received a letter June 2011.

12           So there couldn't be any transfers before that date  
13    that were in an attempt to avoid any obligation to JPMC because  
14    Datatreasury was unaware of any such obligation, so that's one  
15    reason why we think going back to 2011 is broad, more broad  
16    than required necessarily to identify assets currently  
17    available and as broad as is reasonably relevant for  
18    post-judgment discovery in this matter.

19           The second issue is --

20           THE COURT: Let me ask this: I hear your answer, but  
21    Plaintiff's counsel has all but told me that the vast majority  
22    of the monies accrued and paid to Datatreasury through the  
23    enforcement of these patents took place before 2011, and  
24    they're justifiably interested in where the biggest sums of  
25    money came from and where they went. Obviously, any creditor

1 wants to look for the dollars and not look for the nickels  
2 until they have to.

3 What's wrong with and why would it be improper for  
4 the Court to order the same kind of disclosure of receipts,  
5 payments to others, and funds earned and net disbursement to  
6 Datatresury prior to 2011 than what you've given me?

7 MR. GILLILAND: Well, I believe, Your Honor, that  
8 again --

9 THE COURT: Or what you've given them. I'm sorry.

10 MR. GILLILAND: As we've given them. The other  
11 part --

12 THE COURT: I mean, you've told me it may not be  
13 relevant or there -- you know, there might be that was the  
14 first time by which there could have been potentially some  
15 improper transfer, but you haven't told me that there's a  
16 justifiable pro -- that the Court could be prohibited in some  
17 way or could be kept from going that far back if the Court  
18 believed it to be appropriate.

19 MR. GILLILAND: Well, we think it would be both  
20 irrelevant because they were on no notice of any potential  
21 debt, and it would be a time consuming burdensome task on  
22 behalf of my firm, which is a third party to this action, and  
23 Datatresury Corporation, to the extent they have to gather  
24 those documents as well because we're talking about documents  
25 that are from occurrences over six years ago, and we don't see

1 that there's any conceivable way that those could be -- become  
2 part or subject to the judgment, especially when the debtor  
3 could not have possibly had notice of this claim before those  
4 time periods.

5           There's a practical issue at least for the IOLTA  
6 account, Your Honor, and I need to check on the dates, but  
7 sometime in the -- in the 2005 to 2010 time period, our firm  
8 changed the software that they used to maintain the IOLTA  
9 account, so we would have to try and recreate what we were  
10 using at the time.

11           I don't know -- as I stand here, I don't know if it  
12 was before 2007 or in that time period as well, but that's an  
13 additional issue that we need to investigate and figure out if  
14 it causes a problem. I just haven't asked. I had that  
15 explained to me back when this briefing was fresh, but it's  
16 been so long that I haven't asked that question and don't know.

17           THE COURT: Is there one master IOLTA account for the  
18 Nix, Patterson firm or were there separate IOLTA accounts for  
19 Datatreasury or for separate lawsuits brought by Datatreasury?  
20 How centralized or how disbursed is the money flow?

21           MR. GILLILAND: It's a master IOLTA account that all  
22 client funds are tracked in.

23           THE COURT: Okay.

24           MR. GILLILAND: And then our accounting department  
25 keeps track of the transactions and who the funds belong to.

1           For some of the issues that they have about the  
2 documents, they -- as I said, they haven't -- they haven't  
3 called and asked us about them specifically. They haven't  
4 noticed a deposition, asked questions.

5           But for a lot of the documents, my understanding is  
6 that in 2000 -- at the end of 2013, Datatresury's CFO resigned  
7 because there was -- for his own reasons, but I understand at  
8 that point there was very little going on with the corporation,  
9 and since that time Mr. Lane has overseen the transactions  
10 with -- you know, with guidance from the board and others.

11           But a lot of the documents that the CFO maintained  
12 that Mr. Newman mentioned I don't think have been created since  
13 2013. They may just flat not exist. And, again, they haven't  
14 asked for a deposition, but we could get answers to a lot of  
15 that by getting the right person under oath to figure that out.

16           THE COURT: Well, who would be the right person for  
17 Chase to depose if they so chose to pursue a deposition for the  
18 judgment.

19           MR. GILLILAND: I believe it would be Mr. Lane since  
20 he was the one most involved in those things.

21           THE COURT: Do you know about the whereabouts of the  
22 prior CFO who resigned?

23           MR. GILLILAND: I understand he's in New York. We've  
24 been able to get -- with the help of the CEO, Mr. Delucia,  
25 we've been able to get some of the documents that we have

1 turned over, the asset list, et cetera, through him.

2 But I understand he's still in New York, still has an  
3 active CPA practice, but I have not been able to talk with him  
4 directly despite attempts to do so.

5 THE COURT: What else? What else do you want to call  
6 the Court's attention on those matters that we haven't covered  
7 otherwise?

8 MR. GILLILAND: I think I already -- well, for that  
9 matter, Your Honor, I think I've covered everything.

10 You know, we're happy to provide the documents. We  
11 don't want -- as the Court noted at the beginning, we've --  
12 we've maintained in our responses and we thought we made it  
13 abundantly clear in the production correspondence and the Bates  
14 numbering when something is coming from my firm versus from  
15 Datatreasury Corporation.

16 We don't want to allow JPMC to start digging through  
17 the firm's files on this matter or the firm's records on this  
18 matter beyond what we've given them, what they need know, what  
19 the net that went to the client was.

20 So beyond that, we would start getting into both  
21 issues involving the Texas Rules of Professional Responsibility  
22 and privilege issues as well, but we are happy to provide  
23 information about Datatreasury's finances, and we have been  
24 working and trying to get our hands on those with the  
25 corporation where the two key assets have been declared invalid

1 and has minimal operations any more. It's often difficult to  
2 get responses to things.

3 THE COURT: What's your response to Mr. Newman's  
4 representations to the Court about you producing, I assume  
5 within this Bates numbering system, documents that have been  
6 largely or at least partially redacted or otherwise without an  
7 indication through a privilege log or redaction log as to what  
8 the redactions might be.

9 I mean, quite honestly I can certainly understand  
10 getting documents and having large portions of them blacked out  
11 with no idea as to why, what, or any clue about the basis for  
12 such redactions. What's your response to that?

13 MR. GILLILAND: Certainly, Your Honor. We would be  
14 happy to provide a privilege log to it. I know, for example,  
15 there were some documents about entities that we were asked  
16 questions of, like we expect to see documents from these  
17 entities, or the example that he highlighted about the expert  
18 compensation report. I think that's the first time that's been  
19 brought to my attention.

20 We had followed up asking for clarity on what these  
21 questions were based on because we're happy to track it down.  
22 Some of this -- some of the questions and documents they're  
23 asking for -- and the one that springs to mind is there was a  
24 question about a company called Zaah Corporation. I had no  
25 idea that company existed until the question was asked of me.



1 So we're happy to sit down with them and work through the  
2 documents and answer those questions.

3 Or if they say, look, this board meeting minutes  
4 references a report, a compensation report, we haven't found  
5 it, we need you to produce it, then we can go back and hunt  
6 down that report if it isn't in the production somewhere  
7 already in the underlying case.

8 As far as redactions, we're happy to provide a  
9 privilege log. It's my understanding that all of the  
10 redactions made to the board of director meeting minutes are  
11 reports from trial counsel or from general counsel or assisted  
12 general counsel on pending litigation matters before  
13 Datatreasury and, therefore, are covered by the attorney/client  
14 privilege, and that was the only reason I believe we made any  
15 redactions to the board of director meeting minutes was for the  
16 privilege issue, attorney/client privilege issue.

17 THE COURT: All right.

18 MR. GILLILAND: And we're happy to provide a  
19 privilege log.

20 THE COURT: Thank you, Mr. Gilliland.

21 Mr. Johnson, do you have anything for the Court with  
22 regard to your participation in this matter?

23 MR. JOHNSON: Yes, Your Honor, just a couple of  
24 things.

25 First, I'd like to say that originally this -- we

1 were not planning to have a hearing here today. It was -- I  
2 mean, it was originally set for today. I agree with that.

3 But there was discussion of having it in May, and we  
4 represented that we could have Shephard Lane here, and he's the  
5 guy that knows all this stuff, and we were looking to have  
6 Shephard Lane here, and it was decided to have it today when  
7 Shephard Lane's in the hospital.

8 If he was here, he could answer a bunch of the  
9 statements, is what I'm trying to say, Your Honor, and we tried  
10 to have him here. We wish we could have him here, and it might  
11 make sense to reset this hearing to a time when we can have  
12 Shephard Lane here because he's the person that can really  
13 answer probably 70 percent of the questions that the Court has  
14 been asking, and he's the one that the firm has been working  
15 with.

16 THE COURT: Well, I'd like to think I just need to  
17 have one hearing on this matter, but I suspect from what I'm  
18 hearing this morning, there may be multiple hearings to follow,  
19 depending on how this goes.

20 MR. JOHNSON: Your Honor, I apologize, but I think it  
21 may be right.

22 One other point I'd like to make is that basically  
23 all of this briefing is somewhat obsolete because when the  
24 briefing occurred back in 2015, it was before NPR produced a  
25 fairly large amount of documents that I've got here in response

1 to the request, so -- and there hasn't been a lot of sit down  
2 because basically it kind of fell in a void.

3 And I'm not trying to be critical of anyone, but  
4 there hasn't been a lot of sit down between the two counsels  
5 trying to figure out what else is needed, but a significant  
6 amount of documents have been provided by Nix, Patterson.

7 All of the relevant IOLTA documents have been  
8 presented since 2011. All of the settlement statements for  
9 every single settlement that occurred on 2011 and after 2011  
10 has been presented. Certain DTC spreadsheets showing how the  
11 payments were made have been presented. So to say that nothing  
12 has been presented is simply not correct, and we have presented  
13 a lot of documents.

14 And then I would respectfully say -- and I'm not  
15 trying to throw aspersions towards Plaintiff's counsel, but the  
16 subpoena that they have -- that they're asking for and that  
17 they've asked this Court presumably just to come in and say --  
18 I think counsel was asking for an order that just says we have  
19 to present everything that's responsive to this subpoena.

20 Well, this subpoena -- and we objected to it -- is  
21 very wide open. It's not discreet. Number four, all documents  
22 provided or made available to DTC shareholders or other  
23 potential actual investors, so any documents we made available  
24 to DTC or their shareholders they would like to see.

25 THE COURT: Well, let me just stop you right there,

1 and I didn't say this when Mr. Newman was at the podium, but  
2 I'll make it clear to everybody in the room.

3 I don't intend to give the Plaintiff a blank check to  
4 go on a fishing expedition. There are going to be disputes  
5 about what's relevant and what's proper and what's necessary,  
6 and I expect that the Court is going to resolve those disputes,  
7 not the parties.

8 That being said, I agree with you. A lot of this is  
9 obsolete. It's taken 20 months on some of this stuff to get  
10 before a judge. That's not necessarily my fault, but I'm  
11 trying to catch up with something that's obviously old and in  
12 need of being brought up to date.

13 I started off with trying to make a clear distinction  
14 about the fork in the road between pursuing the information  
15 related to Datatresury and the avoidable suspicion on Nix,  
16 Patterson's part that before this is over the allegations are  
17 going to be focused on them and their resources in hopes of  
18 trying to calm the waters so that we could get some more  
19 productive cooperation in pursuing the first fork in the road  
20 that needs to be pursued, and that is what Datatresury got,  
21 when they got it, and where it's gone, and is any of it left to  
22 satisfy this judgment, and I'm all on board to try and get that  
23 done.

24 I'm a little bit -- I'm a little bit confused about  
25 this hard line in the sand on nothing prior to 2011. I'll be

1 honest. I'm not at all sure that -- I understand that's six  
2 years ago, and I understand whatever the money came in before  
3 that date may be long gone by now, but I'm not sure there's a  
4 reason why the creditor's not entitled to see whatever came in  
5 to Datatresury's hands as far back as is reasonably necessary,  
6 and I'm not sure 2011 is a hard line in the sand that for no  
7 reason cannot be crossed.

8           Here's what I think needs to happen. While we've got  
9 the benefit of all you gentlemen in the room -- I've got a full  
10 afternoon of scheduling conferences and civil matters set. You  
11 all need to sit down and talk in a way that you haven't talked  
12 before, and the Court needs a set of updated briefs from  
13 everybody as to where you really are and what's currently at  
14 issue.

15           And the Motion to Compel, the Motion to Enforce the  
16 Subpoena, the Motion to Dismiss the Subpoena, all that is  
17 effectively one issue before the Court in my view, and that is  
18 how we go forward with appropriate and targeted discovery here.

19           So what I'd like is I'd like you all to meet and  
20 confer for at least an hour while you're here, and you've got  
21 the benefit of staying in the courtroom. You've got the  
22 benefit of my jury room, you've got the benefit of the attorney  
23 conference room here in the courthouse.

24           I'd like you to -- I'd like you to meet and confer  
25 about all the various issues we've discussed today. I'd like

1 for you to get a date on a calendar when Mr. Lane can get  
2 deposed, and if there's discovery that needs to actually be  
3 produced before that deposition can be productive, you need to  
4 talk about what that is in addition to what they already have.  
5 Maybe the answer to that is nothing. Maybe there's something  
6 else.

7 And I'd like -- I'd like an updated -- basically I'm  
8 going to call it a status report to the Court. I'd like an  
9 updated status report from both sides particularly bringing up  
10 to date all these out-of-date issues and where we really are  
11 today because reading the briefing, a lot of it is clearly  
12 obsolete.

13 And I'd like something not more than 14 pages from  
14 both sides, and we can call it a status report, but I want you  
15 to tell me where you are on everything, what you don't have,  
16 and how we can focus the issues that I'm going to have resolve  
17 before we go further.

18 And I'm happy to set this for another hearing. I  
19 think you need to get a date on the calendar when this  
20 gentleman who is having his heart surgery or heart issues can  
21 be available and healthy and can start giving information and  
22 answering the 70 percent of the questions, Mr. Johnson, you say  
23 he can answer.

24 And it's been my experience that these issues start  
25 out in a very unfocused and cloudy way with both sides highly

1 suspicious of the other. It's no surprise to me that Skadden  
2 Arps people and the Nix, Patterson people did battle with each  
3 other long before we got to where we are today, and there may  
4 be -- there may be levels of angst or distrust that are there.  
5 I don't know.

6           These things usually start out as very clouded,  
7 unfocused, suspicious process. The more real progress we can  
8 make going forward, the more that will dissipate and the more  
9 we can get down to what really needs to be produced and what  
10 properly is privileged and should not be produced.

11           That's how I see it from a high level, and I want you  
12 all to get together while you're here, and I want you to make  
13 real progress. I want an updated status report from both sides  
14 within the next two weeks, not to exceed 14 pages a side, as to  
15 where you are after you've met and conferred, what are the  
16 still surviving issues from this obsolete briefing that are  
17 still before the Court and still need the Court's attention on,  
18 when you can get a deposition of this gentleman who has the  
19 information that everybody seems to think he has, and then  
20 what's left and where we need to go from there. Then if we  
21 need to reset this 30, 60, whatever days down the road and  
22 follow the process forward, I'm happy to do that.

23           I'm not going to let Chase have a blank check to go  
24 on a fishing expedition in Nix, Patterson's files, not going to  
25 do that, not unless you show me some serious justification, but

1 I'm not going to let Nix, Patterson or Datatresury hide  
2 records that are reasonable and proper and should be produced  
3 so that a judgment creditor who has an enforceable judgment has  
4 a reasonable opportunity to enforce it to the extent the law  
5 provides, and where the disputes develop along the way, I  
6 expect to be the one to resolve them.

7 Any questions from anybody?

8 MR. JOHNSON: Understood, Your Honor.

9 MR. GILLILAND: No, Your Honor.

10 MR. NEWMAN: Judge, I have one question. As part of  
11 the meet and confer, do we want to include -- we'll include the  
12 June 2011 date?

13 THE COURT: That's an issue. I'm going to -- the  
14 updated briefing that you're going to give me, I want you both  
15 to address that issue and the propriety and properness of going  
16 before that date or staying with that date as some kind of a  
17 threshold before which Datatresury and/or Nix, Patterson says  
18 you shouldn't go.

19 MR. NEWMAN: Thank you. Because that -- that -- in  
20 response --

21 THE COURT: That sounds like it's one of the bigger  
22 issues out there.

23 MR. NEWMAN: It actually has prevented us from  
24 serving any other subpoenas, so they use the accountants, they  
25 use the Shelton firm. We didn't want to subject subpoenas and



1 have multiple jurisdictions dealing with an issue that was  
2 already before the Court as to the June 2011 date, so it has  
3 effectively impeded our ability to even move forward and get  
4 records from non-parties.

5 THE COURT: To the extent after you meet and confer  
6 that's still a point of disagreement, once I get the briefing  
7 on that issue, along with your updated status reports, I may  
8 make a decision and say, no, you don't get it or, yes, you do.

9 MR. NEWMAN: Thank you.

10 THE COURT: And if we have to, we'll cross that  
11 bridge when I see some updated authorities and argument.

12 MR. NEWMAN: Thank you.

13 THE COURT: I'm going to leave you in the  
14 courtroom -- no. As a matter of fact, given the numbers of you  
15 and the fact that I'm going to have this room start filling up  
16 pretty soon with people, I'm going to ask you to retire and  
17 deliberate in the jury room, which is right through these  
18 doors.

19 And, Mr. Patterson, if you'll make sure there's  
20 nobody else in the jury room and it's available to these  
21 counsel, that they have it on an undisturbed basis for at least  
22 an hour. If they want to stay all afternoon, if they're making  
23 progress, I want them to be able to stay, but I want them to be  
24 here at least until 1:00 o'clock.

25 All right. Other questions? I'll look forward to

1 your updated briefing and we'll go forward as we need to. This  
2 hearing has been completed at least for purpose of the status  
3 conference and the Court stands in recess. You're excused,  
4 counsel.

5 COURT SECURITY OFFICER: All rise.

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7 (Hearing concluded.)

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JP MORGAN CHASE BANK, NA vs DATATREASURY CORPORATION  
STATUS CONFERENCE AND MOTIONS HEARING, on 03/27/2017

43

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and  
correct transcript from the stenographic notes of the  
proceedings in the above entitled matter to the best of my  
ability.

Date: 3/28/17

Tammy L. Goolsby, CSR  
Deputy Official Court Reporter  
State of Texas No.: 3101  
Expiration Date: 12/31/18

Tammy Goolsby, CSR  
903-445-5355

JP MORGAN CHASE BANK, NA vs DATATREASURY CORPORATION  
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